IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 3197 OF 1997

Sudhakar K. Mahajan .... Petitioner

versus

Suhas Kulkarni and others ..... Respondent.

Shri S.S.Pakale for the petitioner
Shri C.G.Gavnekar for the Respondent no.1

CORAM; A.P. DESHPANDE, J.
DATED; 7TH JUNE, 2007

JUDGMENT;

1. The petitioner is a Assistant Teacher working in a school administered by the respondent no.1 Lok Seva Sangh. This petition has been filed taking an exception to a judgment and order passed by the Presiding Officer, School Tribunal dismissing the appeal filed by the petitioner challenging in turn the legality and validity of the order of termination. Few facts that are necessary to adjudicate the issues are stated hereinbelow.

2. The petitioner being very much eligible and qualified for appointment as Assistant teacher, came to be so appointed with effect from 4th July 1992 on

probation for a period of two years. Till February 1994 the respondent nos.1 and 2 did not have any greivance about the work or behaviour of the petitioner. A news item came to be published in a daily on 5-2-1994 attempting to glorify the activities and performance of the night school. It revealed from the said right up that the present petitioner had associated himself as a Head Master in the night school. The management came in possession of the news item and realised that without seeking prior permission of the management, the petitioner has been teaching in the night school. Finding that the said act on the part of the petitioner is impermissible, it issued memo to the petitioner on 10-2-1994 stating therein that the petitioner was working as Head Master in the night school and the said act is in contravention of Rule 71(4) of the Secondary School Code. It is further stated that the petitioner not only did not obtain prior permission of the management but did not even intimate the school management. It is then stated that the poetitioner’s working in night school is contrary to the rules and an explanation came to be sought within seven days in that regard. The petitioner tendered his explanation vide letter dated 16-2-1994 addressed to the Head Master. The petitioner categorically stated that he did not teach in the nigh school for any pay or monetary

consideration. The petitioner claimes that he did not accept any money or remuneration and that he has not committed any misconduct. The school manmagement then again addressed a letter dated 7-3-1994 to the petitioner stating therein that, as the ptitioner had not admitted to have worked as Head Master in the night school, a copy of the news paper report along with the photograph of the petitioner was sent to him and it was aserted that the stand taken by the petitioner is absolutely false and contrary to the fact situation. It then concluded that as the explanation given by the petitioner is false, the behaviour of the petitioner is objectionable.

3. A further explanation was called within a period of seven days, which was tendered by the petitioner videletter dated 15-3-1994. The petitioner gave an elaborate reply re-iterating his earlier stand that the petitioner did not accept any money or remuneration but had taught in the night school to perform social obligation. The petitioner also submitted a certificate issued by the night school that the petitioner has been working honourary and did not receive any money or remuneration. Not being satisfied with the explanation tendered by the petitioner, the management terminated the petitioner from service by order of termination dated 29-4-1994,

observing therein that as the behaviour of the petitioner during the probation period is not satisfactory, he stands terminated from service.

4. Aggreived by the termination order, as stated hereinabove, the petitioner filed an appeal before the School Tribunal. Before School Tribunal the petitioner contended that he had not accepted any pay or remuneration as consideration for teaching in the night school and hence there was no need to obtain permission of the management. According to the petitioner, working in night school without receiving consideration was a permissible act under Rule 23(1)(b) of the Rules. Whereas, according to the management a prior permission was must under Rule 22(2)(g) of the Rules. The school Tribunal perused the news paper report and on the basis of statements made therein concluded that the petitioner had accepted remuneration and had thereafter donated the same to the school. The tribunal has considered the wright up in the news paper as depicting gospel truth and an admissible piece of evidence. It was next contended by the petitioner that as the foundation, for issuing the order of termination was an act of misconduct, punishment could not have been imposed without holding an enquiry. The school Tribunal has rejected the said contention by holding that there is

no provision in the act to hold an enquiry against a probationer. In the above factual background the learned counsel for the petitioner has submitted that all through out, the petitioner continues to be in the employment for last about 15 years. During pendency of the appeal interim order was operating and when Rule came to be issued by this court, interim relief in terms of prayer clause (c) has been granted on account of which, the petitioner continues to be in service during the pendency of the present petition. It is thus clear that the petitioner has been in un-interupted continuous service since year 1992 till date and has put in about 15 years of service till now. The learned counsel for the petitioner makes a statement that the moment management objected to his working in the night school, he ceased and desisited from working and he stopped to associate himself with the activities of the said night school. The said statement is not controverted.

5. Rule 22 lays down the duties and code of conduct and sub rule 2(g) provides thus

"Full-time teaching staff shall not accept

part-time employment on payment or for any consideration in another education, cultural or literry institution without obtaining prior written permission from the authorities of the school in which he is employed on full-time basis. Such work shall, however, be limited to two hours per day including private tuitions. In respect of a full-time non-teaching employee desirous of working in night school, he shall be so allowed for the entire working period of the night school."

The subject of private tuition has been dealt with in Rule 23 and Rules 23 (1)(b) reads thus:

"A teacher shall not do private tuition for more than two hours a day or teach more than five pupils during the whole period of tuition in the day. The expression "five pupils" means the same five pupils and not batches or pupils. Day school teachers working in night schools may work for full duration of the night school instead of two hours as mentioned in this rule provided they do not undertake private tuition."

6. Placing reliance on the later part of the rule, the petitioner submits that the day school teachers can work in the night school for all duration of the night school provided they do not undertake private tution. I do not see any conflict in Rule 22(2)(g) and Rule 23(1)(b) in as much as Rule 22 (2)(g) puts a rider of two hours duration which has been done away with by the later part of the Rule 23(1)(b). Rule 23(1)(b) does not itself permit a day school teacher to engage night school classes. It is the case of the petitioner that permission of the management is required only if a full time teacher engages himself in a part time employment on payment or for any consideration in another institution, and as the petitioner had not received any payment or consideration, the petitioner is not guilty of committing any act of misconduct. Breach of code of conduct is prescribed as a misconduct under Rule 28 of the Rules.

7. The school Tribunal has held the petitioner guilty of an act of misconduct by recording a further finding on fact that the petitioner had accepted remuneration and is thereafter donating the same to the school, would not change the nature of employment under which he has

received the remuneration. The school Tribunal has committed an error in proceeding to find out as to whether the petitioner is guilty of misconduct or otherwise for obvious reason that no enquiry was held whatsoever touching the act of misconduct and as such the Tribunal could not have recorded the finding that on account of having accepted remuneration for working in a night school, the petitioner has breached the code of conduct. The tribunal has also not properly addressed the issue raised by the petitioner that if the order of termination is penal in nature, then it needs to preceed an enquiry in consonance with the Rules 36 and 37 of the Rules. The Tribunal has held that the act does not postulate holding of an enquiry against a probationer. No penal order can be passed against a probationer or even against a temporary employee without holding an enquiry is the settled position of law. The judgment of the Tribunal suffers from a patent illegality requiring intervention by this court.

8. It thus appears from the record that the respondent nos. 1 and 2 do not have any greivance about the work and performance of the petitioner. The management was not happy with the behaviour of the petitioner in accepting an engagement in the night

school without seeking prior permission and the petitioner, on noticing the same he has stopped working in the night school since the year 1994. Initially the petitioner was continued in service during the pendency of the appeal on account of an interlocatory order passed and when this court granted rule, the petitioner was granted protection in service and was continued in service in the school from the year 1994 till date and the management had thereafter no cause or greivance about the work and behaviour of the petitioner.

9. In the peculiar facts of the present case, I am inclined to allow the writ petition. I therefore quash and set aside the order passed by the Tribunal and also the termination order dated 29-4-1994 issued by the respondent no.1. This judgment shall not operate as a precedent as it is rendered in the peculiar facts of the present case. Rule made absolute in the above terms with no order as to costs.

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